

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA *ex rel.*
JOSEPH SEIKEL and TERENCE SEIKEL,

Plaintiffs,

v.

Civil Action No. 1:23-cv-00001
Honorable Thomas S. Kleeh

DAVID B. ALVAREZ; APPLIED
CONSTRUCTION SOLUTIONS, INC.;
ENERGY TRANSPORTATION, LLC;
ENERGY RESOURCE GROUP, LLC;
ET360, LLC; BEAR CONTRACTING, LLC;
BEAR UTILITIES, LLC; JASON P.
HENDERSON; and JOHN DOES NOS. 1-50,
FICTIONAL NAMES;

Defendants.

HENDERSON DEFENDANTS' MOTION TO DISMISS

Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC (collectively, the “Henderson Defendants”), by and through counsel, move this Court, pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), to dismiss the Complaint for False Claims Act Violations Under 31 U.S.C. §§ 3729–3733 filed by Joseph Seikel and Terence Seikel (collectively, the “Seikels”). The Court should dismiss the Seikels’ complaint for the following reasons. First, the Court should dismiss the action for lack of jurisdiction because the Seikels are not qualified to bring this *qui tam* action as relators. Second, the Court should dismiss the complaint pursuant to Federal Rule of Civil Procedure 9(b) because the Seikels have failed to allege fraud with the requisite particularity. Third, the Court should dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Seikels fail to state a claim under the False Claims Act upon which relief can be granted.

A memorandum in support of this motion is submitted herewith.

WHEREFORE, Defendants Jason P. Henderson, Energy Resource Group, LLC, and ET360, LLC respectfully request the Court to grant their motion and enter an order dismissing the complaint with prejudice.

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Shawn Angus Morgan

Allison B. Williams (WV ID # 11329)

Shawn A. Morgan (WV ID # 6640)

Quentin T. Collie (WV ID # 13830)

400 White Oaks Boulevard

Bridgeport, WV 26330

(304) 933-8000

allison.williams@steptoe-johnson.com

shawn.morgan@steptoe-johnson.com

quentin.collie@steptoe-johnson.com

*Counsel for Defendants Jason P.
Henderson, Energy Resource Group, LLC,
and ET360, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February 2023, a true and correct copy of the foregoing “Henderson Defendants’ Motion to Dismiss” was electronically filed and served through the Court’s CM/ECF system on counsel of record listed as:

**BARON & BUDD, P.C.
OF COUNSEL**

William G. Powers
Andrew M. Miller
The Watergate, 10th Floor
600 New Hampshire Avenue, NW
Washington, DC 20037

POWELL & MAJESTRO, PLLC

Anthony J. Majestro
405 Capitol St., Suite P-1200
Charleston, WV 25301

**BAILEY & GLASSER, LLP
OF COUNSEL**

Marc R. Weintraub
Alexandra Langley Serber
Patricia M. Kipnis
209 Capitol St.
Charleston, WV 25301

U.S. DEPT. OF JUSTICE

Elizabeth L. Coyne
Gregory B. David
U.S. Attorney’s Office
615 Chestnut St., Suite 1250
Philadelphia, PA 19106

Christopher James Prezioso
Maximillian F. Nogay
U.S. Attorney's Office - Whg
PO Box 591
Wheeling, WV 26003

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Shawn Angus Morgan

Shawn A. Morgan (WV ID # 6640)

400 White Oaks Boulevard

Bridgeport, WV 26330

(304) 933-8000

shawn.morgan@steptoe-johnson.com

*Counsel for Defendants Jason P.
Henderson, Energy Resource Group, LLC,
and ET360, LLC*